

July 29, 2013

Scott Chan, CFA
Chief Investment Officer
Sacramento County Employees' Retirement System
980 9th Street, Suite 1900
Sacramento, CA 95814

Re: Your Request for Informal Assistance
Our File No. I-13-097

Dear Mr. Chan:

This letter responds to your request for advice regarding provisions of the Political Reform Act (the "Act").¹ This letter is based on the facts presented. The Fair Political Practices Commission does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because your question is general in nature and not limited to a specific governmental decision, we are treating your request as one for informal assistance.²

Please note that the Commission does not provide advice on bodies of law outside the confines of the Act. Thus, we offer no opinion on the application of incompatible activities and conflict-of-interest laws that may apply including common law conflict of interest and Government Code section 1090.

QUESTION

Does the Act prohibit you from serving as an advisory board member of a private-sector company, while you continue to serve in your position as the Chief Investment Officer of the Sacramento County Employees' Retirement System ("SCERS")?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requester with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; Regulation 18329(c)(3).)

CONCLUSION

Nothing in the Act prohibits a public official from holding a second position, whether it is in public or private employment. Instead, the Act prohibits public officials, such as yourself, from making, participating in making or using their positions to influence a government decision which will have a reasonably foreseeable material financial effect on their financial interests.

FACTS

You are the Chief Investment Officer at SCERS, which is a multiple-employer public employee retirement system, enacted and administered in accordance with the provisions of the County Employees Retirement Law of 1937. SCERS currently has \$7 billion in assets under management and is diversified across multiple assets classes including, equities, fixed income, private equity, hedge funds, real assets and opportunities.

In your role at SCERS, you help to oversee, administer and set the direction for SCERS' investment program including: (1) hiring, monitoring and terminating investment managers; (2) determining the long-term asset allocation and sub allocation for the investment program; (3) developing the investment policy and implements it; (4) providing and creating a plan for investment education to SCERS' Board; (5) managing SCERS' investment staff; and (6) coordinating direction on all investment issues for SCERS' partners including its external investment consultants, the hedge fund strategic partner, the custodian, the commission recapture program, the overlay program and the securities lending program.

Both you and SCERS' CEO, Richard Stensrud, make investment recommendations to SCERS' Board of Directors for consent and approval. Also, you note that SCERS' investment staff does not invest directly in assets, but rather SCERS hires investment managers who are bound to act as a fiduciary and invest directly in assets on behalf of SCERS. The investment manager has sole discretion on the selection of securities for investment. For example, SCERS might own a stock such as Intel Corporation (ticker: INTC) traded on the NASDAQ stock exchange. However, this ownership would be the direct result of an investment manager's decision and research to own the equity.

You have been asked to serve a two-year term as an advisory board member of Meetyl, a private software technology company attempting to improve the investment process of companies and investment managers. In that position, you would advise and make non-binding recommendations to Meetyl's Board of Directors with respect to matters germane to your experience and expertise. However, the ultimate responsibility for the management of Meetyl's business and affairs rests with Meetyl's Board of Directors.

As an advisory board member, you would receive shares of Meetyl stock amounting to 0.1% of the shares outstanding or approximately \$4,700 for a two-year term based on the most recent post-money valuation of \$4.7 million for Meetyl. In addition, Meetyl would reimburse

you for reasonable expenses, including travel-related expenses, incurred in connection with your services as an advisory board member.

ANALYSIS

The Act does not prohibit a public official from holding a second position, whether it is in public or private employment. Such outside employment may, however, give rise to conflicts of interest that disqualify the official from certain governmental decisionmaking. Specifically, Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.³

Section 87103 of the Act provides that an official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating [\$440] or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

³ A public official “makes a governmental decision” when the official, acting within the authority of his or her office or position, votes on a matter, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Regulation 18702.1.) A public official “participates in a governmental decision” when, acting within the authority of his or her position and without significant intervening substantive review, the official negotiates, advises, or makes recommendations to the decisionmaker regarding the governmental decision. (Regulation 18702.2.) For a decision before the official's own agency, a public official is attempting to use his or her official position to influence a decision if, for the purpose of influencing, the official contacts or appears before any member, officer, employee, or consultant of the agency. (Regulation 18702.3.)

As the Chief Investment Officer of SCERS, you are considered a “public official” under the Act, and are therefore subject to the disqualification provisions of the Act. (Section 82048; Regulation 18700.)

The Political Reform Act nowhere prohibits ownership of any given stock or other investment interest. However, as mentioned, the Act states a public official has an interest in a business entity where the official has a direct or indirect investment worth \$2,000 or more. Section 82034 defines an “investment” to mean “any financial interest in or security issued by a business entity, including but not limited to common stock, preferred stock, rights, warrants, options, debt instruments and any partnership or other ownership interest owned directly, indirectly or beneficially by the public official” Thus, your shares of Meetyl stock would constitute an investment in Meetyl.

According to your facts, Meetyl would compensate you through shares of stock amounting to 0.1% of the shares outstanding or approximately \$4,700 for a two-year term.⁴ Therefore, assuming your shares were valued at \$2,000 or more, you would have an interest in Meetyl as a business entity under Section 87103(a), and you would be prohibited from making, participating in making or attempting to influence a governmental decision that would have a material financial effect on this interest under the Act.⁵

In addition to the interests identified above, a public official always has an interest in his or her personal finances. This is also known as the “personal financial effects” rule. A governmental decision will have an effect on this interest if the decision will result in the personal expenses, income, assets, or liabilities of the official or his or her immediate family increasing or decreasing. (Section 87103, Regulation 18703.5.)⁶

We note that because the Commission is authorized only to render advice on public officials' obligations under the Act, we do not address other laws outside the purview of the Act that may also bear on your situation. These include Section 1090, which bars public officials from acting in their governmental capacity to participate in making a contract in which they are financially interested, and Section 8314, which prohibits the use of government resources (including your paid SCERS time) for a private purpose. Also, policies of SCERS may place restrictions on your outside employment activities that are incompatible with your employment there. We recommend you contact your agency's legal counsel, or the Attorney General's office, for advice on these potential issues.

⁴ You base this figure on the most recent post-money valuation of \$4.7 million for Meetyl.

⁵ If you declined compensation via shares of Meetyl stock, a possibility raised by your letter, you would still have an interest in Meetyl because you would still hold a position in a business entity. (Section 87103(d). Moreover, even if Meetyl does not pay you a salary, please bear in mind that reimbursement for expenses, including travel expenses, for your work at Meetyl could be considered income under the Act (Section 82030), and could potentially make Meetyl a source of income to you.

⁶ Because the conflict-of-interest provisions of the Act are “decision” based, we recommend that you request written advice from the Commission when you have facts regarding a specific governmental decision.

Finally, you should also be aware of the prohibition concerning influencing prospective employment contained in Section 87407 of the Act. That section provides that no public employee shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating prospective employment.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Jack Woodside
Counsel, Legal Division

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